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To The Applicant

Your Ref:

Our Ref: EN070007

Date: 9 May 2023

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Dear Sir/ Madam

## **The Planning Act 2008 – Section 89**

### **Application by Liverpool Bay CCS Limited for an Order Granting Development Consent for the HyNet Carbon Dioxide Pipeline**

#### **Notice by Applicant of intention to submit a request for changes to the application**

Thank you for your letter dated 3 May 2023 [AS-066] giving notice of Liverpool Bay CCS Limited's intention to submit a second request for changes to the application. It is entitled 'Notification of Intention to Submit a Change Request 2' (NISCR2) and has been published on the National Infrastructure Planning website and can be found using the above link. Your letter [AS-066] sets out the:

- Proposed Changes Request 2, including a description of, and justification for, the changes.
- Intention to submit a 2023 Environmental Statement (ES) Addendum Change Request 2 document.
- Proposed consultation approach details.
- Indicative timescales for introducing the changes.
- Proposed amendments to the Applicant's Change Request 1 timetable to ensure its duties under the relevant Regulations are complied with and that consultees have sufficient time to consider and respond.

The letter has been submitted in accordance with Step 1 of the recommended procedure in the Planning Inspectorate's 'Advice Note 16: How to request a change that might be material' (AN16). In terms of the NISCR2 it describes changes to the Order Limits and one additional design option that would result in variations to the land subject to compulsory

acquisition and rights over the land. It also indicates that a change request will be submitted on 26 May 2023.

The Examining Authority (ExA) in regard to the above matters would provide the following advice in regard to the Applicant's NISCR2, with a view to allowing the Applicant to finalise and implement their proposed consultation on its material Change Request 2 application.

### **Materiality of the proposed changes**

The ExA notes the proposed changes include:

Change 1 – An Embedded Pipe Bridge (EPB) option to cross the Alltami Brook, as an alternative to the Applicant's preferred trenched crossing approach, should its preferred option not be considered to be compliant with the Water Framework Directive.

The EPB option requires land take of the surface of land currently shown on the land plans as sub-surface acquisition only. Whilst this proposed change would not bring additional land into compulsory acquisition, the categorisation of acquisition sought would change.

Additionally, the Applicant states the EPB option, if chosen, would also require the permanent diversion of a public right of way around the support of the bridge structure.

The Applicant considers it is fair and reasonable to consult on this change, should it be accepted, given the potential increase in interference with landowners' rights.

Change 2 – concerns two locations related to the 2 Sisters Food Group. The prospective amendments would see the addition of land to the Order Limits in one location (being an additional length of an existing maintenance track to the north/ north-east of Chester Road East), whilst removing a second area of land from the Order limits that includes a lorry turning circle used in relation to the operation of the 2 Sisters Food Group factory.

The Applicant states it anticipates Regulation 4 of The Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (the CA Regulations) applies to its proposed changes. On the basis of the information supplied in the Applicant's NISCR2, the ExA does not disagree with the Applicant's opinion in this regard, especially as the Applicant has not indicated whether it has the landowner consent as to the inclusion of the 'Additional Land' it is seeking to incorporate into the Order limits. However, ultimately, it is for the ExA to decide whether or not a proposed change is material once the formal request is submitted.

The ExA considers the NISCR2 [AS-066] provides a clear description of the proposed changes and sets out the Applicant's rationale and pressing need for making the changes detailed in that document. However, the ExA also considers the proposed changes may give rise to new or materially different likely significant effects but does not at this time have sufficient information to reach an opinion. As such the ExA would seek the submission of adequate information from the Applicant, in this regard, with its Change Request to enable the ExA to reach an opinion on this matter. Additionally, the Applicant will need to ensure the information prescribed by Regulation 5 of the CA Regulations is submitted as part of any formal Change Request made.

With regard to impacts on the examination timetable, the ExA is extremely concerned with regard to the timescales currently set out in the NISCR2. Having carefully considered these the ExA is not currently satisfied that, when applying Regulations 5 to 19 of the CA Regulations, enough time remains within the statutory six months Examination. As such the ExA would seek clarification from the Applicant in any formal Change Request submission, as to how all the procedural requirements as set out in Regulations 5 to 19 of the CA Regulations can be met within the remaining statutory six-month Examination stage.

The ExA would urge the Applicant to give serious consideration to the Examination timetable, as set out in its NISCR2 letter, as accommodating the proposed changes into the Examination Timetable would be reliant on the Applicant acting with urgency, submitting the formal change request as early as possible and providing the ExA with the Certificates of Compliance, as required by Regulation 9 of the CA Regulations, much earlier than the 10 working days allowed. Serious consideration would also have to be given to publication dates with a view to undertaking this as soon as possible, should the change request be accepted, whilst ensuring the consultation still complies with the CA Regulations.

## **Consultation**

Whether or not the proposed changes are material the ExA considers that, in order to ensure fairness, appropriate and proportionate consultation should be carried out. The ExA notes the Applicant's position regarding consultation on the proposed changes in advance of submission (see section 42 (a) to (d) of the Planning Act 2008) is unnecessary as the changes requested are a result of the responses provided to previous consultation and subsequent engagement with Interested Parties. Whilst not ideal, the Applicant's justification as to why such general publicity in advance of the submission of its formal Change Request is not required to ensure fairness is noted and the Applicants position in this regard is understood.

Irrespective of the above, when submitting the formal change request the ExA recommends that the Applicant submits a statement which:

- lists the persons (affected by the changes) who they will be consulting (identifying any new persons ie those who were consulted in relation to the proposed change but not in relation to the original application);
- identifies (within the above list) those persons who are “affected persons”, meaning those persons over whose land Compulsory Acquisition powers will be exercised.
- provides justification as to why any person who would have normally been consulted under section 42(1)(a) to (d) is not affected by the proposed changes and has not therefore been consulted.

If the ExA decides to accept the changes (whether or not material) into the Examination, all Interested Parties will have an opportunity to make representations on the changed application in writing or orally at hearings as the Examination progresses.

### **Next steps**

The Applicant is asked to ensure therefore that the change request, which it currently intends to submit on 26 May 2023, responds fully to the points made above.

It should be noted that the ExA does not imply any acceptance of the NISCR2 in this letter. Furthermore, please note that should any formal Change Request be accepted by the ExA the proposed Changes would be made on the basis that all the processes can be completed in the required time prior to the close of the Examination and in accordance with any revised Examination Timetable that may be published. Should it not be possible to achieve this, then we would not be in a position to take the change request into account in the ExA's recommendation report to the Secretary of State as it would not have complied with the relevant statutory procedures.

Yours faithfully

*Christopher Butler*

### **Examining Inspector**

This communication does not constitute legal advice.

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